Achi a/p Suppiah v Devamurthy a/l Suppiah

HIGH COURT (PULAU PINANG) — CIVIL SUIT NO 22–590 OF 2005
CHEW SOO SO JC
8 DECEMBER 2009

Contract — Formation — Oral contract for sale of property — Vendor denied existence of oral agreement — Whether plaintiff and defendant entered into binding oral agreement for purchase of property — Whether drunkenness negated or vitiated consent to agreement — Whether defendant breached agreement — Whether specific performance ought to be granted

On 14 September 2005, the plaintiff and the defendant entered into an oral agreement whereby the defendant agreed to sell and the plaintiff agreed to buy a semi-detached house belonging to the defendant situated at No 2051 Supreme Garden, Penang ('the property') at the price of RM300,000. The plaintiff's case was that the defendant had offered to sell the property to the plaintiff's husband at a gathering of family and friends in her mother-in-law's house. The plaintiff's husband had then informed his brother, a lawyer in practice who was also present at the gathering, of the intended sale and purchase. Since the plaintiff's husband foresaw difficulties in obtaining a bank loan he suggested that the plaintiff would be in a better position to purchase the property. Both the plaintiff and the defendant agreed to this suggestion. The plaintiff's brother-in-law ('the lawyer') and two other friends were all witnesses to the oral agreement between the plaintiff and the defendant. It was also agreed between the parties, in the presence of the two friends and the lawyer, that the plaintiff would pay the defendant RM30,000 in cash on 15 September 2005 with the balance sum of RM270,000 to be paid within three months from the date of the agreement with one month extension. The defendant had also disclosed to the plaintiff and her husband, in the presence of the witnesses, that the property was charged to the Bank Bumiputra Commerce ('BCB') because he was still paying the installment for the housing loan from the bank. As such it was also agreed between the parties that the plaintiff would settle the balance of the defendant's loan and redeem the property from the bank. On 15 September 2005, the plaintiff's husband, acting on behalf of the plaintiff, paid the defendant RM30,000 as agreed. However, the defendant failed to deliver the relevant documents as promised to the plaintiff's brother-in-law to enable the latter to prepare the sale and purchase agreement ('the SPA'). Instead the defendant denied that there was an oral agreement concluded on 14 September 2005. The plaintiff

then commenced a civil suit against the defendant wherein she prayed for specific performance of the oral agreement entered into between the parties on 14 September 2005. In his defence the defendant pleaded that the parties were having alcoholic drinks on the night of 14 September 2005 and as such drunkenness as a defence vitiated or negated his consent to any agreement. The defendant further pleaded that he had not entered into any contract with the plaintiff. He submitted that he only knew the plaintiff through her husband and that she was never among the group when the sale of the property was discussed. The plaintiff testified that although she was not a party to the initial discussion she later joined the group after it was suggested by her husband that she purchase the property from the defendant. The two friends and the lawyer brother-in-law confirmed the plaintiff's version of events. The defendant further denied having discussed with the plaintiff's husband or the lawyer any terms for the sale and purchase of the property on 14 September 2005. The main issues in this case were whether the plaintiff and the defendant had entered into a binding oral agreement for the purchase of the property on 14 September 2005 and, if there was such an agreement, whether the defendant had breached it.

Held, allowing the plaintiff's application with costs:

(1) In the absence of a written contract as in this case, the issue of whether a binding contract existed was essentially a question of fact. In order for drunkenness to vitiate or negate the consent of any party to an agreement there must be strong evidence from the witnesses or medical evidence to prove that the party who asserted that fact was in fact drunk, so much so that he would probably not be able to comprehend the terms of the agreement to give his consent thereto. In this case there was no such evidence. In fact, the evidence showed that although the defendant raised the issue of drunkenness in his pleadings and evidence initially, he affirmed in cross-examination that no one was drunk. By such admission, drunkenness is not the defendant's defence to vitiate or negate his consent to any agreement on 14 September 2005 (see paras 14–15).

(2) On a balance of probabilities it was found that the direct evidence of the plaintiff's witnesses that the plaintiff was present and agreed to the purchase of the property corroborated the evidence of the plaintiff's husband and the plaintiff and was thus more probable as compared to the evidence of the defendant and his witness. From such evidence it was established that the plaintiff was present at the discussion of the sale and purchase after she had agreed with her husband's suggestion to buy the property from the defendant (see para 17).

(3) From the defendant's evidence during cross-examination, it was clear that on 14 September there was a discussion for the sale of the property at the price of RM300,000 and it was probable that one of the terms agreed upon by the parties was that the plaintiff would pay and redeem the property from BCB and pay the balance of the purchase price to the defendant. If the information of the outstanding loan with the bank had not been discussed the plaintiff and her witnesses would not know that the defendant was still owing money to BCB (see para 24).

(4) If there was no agreement between the plaintiff and the defendant, the defendant could not be persuaded or forced to accept the RM30,000, being 10% of the purchase price of the property. It was only reasonable to infer that the defendant felt constrained by his agreement on 14 September 2005 which he could not revoke on 15 September 2005 and thus felt compelled to receive the RM30,000. In the light of such evidence, the evidence of the defendant's witnesses of no negotiation and no agreement would fail on a balance of probabilities. In any case the evidence of the defendant's witnesses was inconsistent and unreliable. From the totality of evidence and on a balance of probabilities, the plaintiff had proved that an oral agreement had been entered into between herself and the defendant in respect of the sale and purchase of the property at RM300,000 with the other concluded terms as stated in evidence by the plaintiff and her witnesses (see paras 26–27).

(5) The declaration of the defendant on 15 September 2005 that he was not selling the property showed that he had intended the breach. The fact that having accepted the RM30,000, being the 10% towards the purchase price of RM300,000, the defendant failed to submit all relevant documents as agreed by him to prepare the sale and purchase agreement added to his intention to breach the oral agreement. The ultimate return of the RM30,000 deposit further affirmed the breach on the part of the defendant. As such on a balance of probabilities the defendant had committed a breach of the oral agreement (see para 29).

(6) Specific performance is an equitable relief. Under s 11(2) of the Specific Relief Act 1950, unless and until the contrary is proved, the court shall presume that breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money. In the instant case there was no evidence to the contrary (see para 30).

[Bahasa Malaysia summary

Pada 14 September 2005, plaintif dan defendan telah memasuki satu perjanjian lisan di mana defendan bersetuju untuk menjual dan plaintif bersetuju untuk membeli sebuah rumah berkembar dua milik defendan yang

terletak di No 2051 Supreme Garden, Pulau Pinang ('hartanah tersebut') pada harga RM300,000. Kes plaintif adalah bahawa defendan telah membuat tawaran untuk menjual hartanah tersebut kepada suami plaintif dalam satu pertemuan keluarga dan rakan-rakan di rumah ibu mertuanya. Suami plaintif kemudian telah memberitahu abangnya, seorang peguam yang beramal yang juga hadir semasa pertemuan itu tentang niat jual beli tersebut. Memandangkan suami plaintif telah nampak kesulitan yang akan dihadapi untuk mendapatkan pinjaman bank dia telah mencadangkan bahawa plaintif akan berada dalam kedudukan yang lebih baik untuk membeli hartanah tersebut. Kedua-dua plaintif dan defendan bersetuju dengan cadangan ini. Abang ipar plaintif ('peguam tersebut') dan dua rakan lain semuanya menyaksikan perjanjian secara lisan antara plaintif dan defendan. Adalah juga dipersetujui antara pihak-pihak, dengan kehadiran kedua-dua rakan dan peguam tersebut, bahawa plaintif akan membayar defendan RM30,000 secara tunai pada 15 September 2005 dengan jumlah bagi RM270,000 yang perlu dibayar dalam tempoh tiga bulan dari tarikh perjanjian dengan lanjutan masa sebulan. Defendan juga telah mendedahkan kepada plaintif dan suaminya, dengan kehadiran saksi-saksi tersebut, bahawa hartanah tersebut telah dicagarkan kepada Bank Bumiputra Commerce ('BCB') kerana dia masih membayar ansuran pinjaman perumahan daripada bank itu. Oleh itu adalah juga dipersetujui antara pihak-pihak bahawa plaintif akan menyelesaikan baki pinjaman defendan dan menebus hartanah itu daripada bank. Pada 15 September 2005, suami plaintif, yang bertindak bagi pihak plaintif, telah membayar defendan RM30,000 sebagaimana dipersetujui. Walau bagaimanapun, defendan telah gagal untuk menyerahkan dokumen-dokumen relevan sepertimana yang dijanjikan kepada abang ipar plaintif untuk membolehkannya menyediakan perjanjian jual beli ('PJB'). Sebaliknya defendan telah menafikan bahawa terdapat perjanjian lisan dibuat pada 14 September 2005. Plaintif kemudian telah memulakan guaman sivil terhadap defendan yang mana dia telah memohon pelaksanaan spesifik perjanjian lisan yang telah dimasuki antara pihak-pihak pada 14 September 2005. Dalam pembelaannya defendan telah memplidkan bahawa pihak-pihak telah mengambil minuman keras pada malam 14 September 2005 dan oleh itu sifat pemabuk sebagai pembelaan tidak mengesahkan atau menyangkal persetujuannya kepada apa-apa perjanjian. Defendan selanjutnya memplidkan bahawa dia tidak memasuki apa-apa kontrak dengan plaintif. Dia menghujahkan bahawa dia hanya mengetahui plaintif melalui suaminya dan yang dia tidak berada dalam kumpulan itu semasa jualan hartanah tersebut dibincangkan. Plaintif memberi keterangan bahawa meskipun dia bukan pihak kepada perbincangan awal itu dia kemudian telah turut serta dalam kumpulan itu selepas dicadangkan oleh suaminya agar dia membeli hartanah tersebut daripada defendan. Kedua-dua rakan dan peguam abang ipar itu telah mengesahkan versi kejadian plaintif. Defendan selanjutnya telah menafikan telah berbincang dengan suami plaintif atau peguam tentang apa-apa terma untuk jual beli hartanah tersebut pada 14

A September 2005. Isu-isu utama dalam kes ini adalah sama ada plaintif dan defendan telah memasuki perjanjian lisan yang mengikat untuk belian hartanah tersebut pada 14 September 2005 dan, jika terdapat perjanjian sebegini, sama ada defendan telah melanggarinya.

B

Diputuskan, membenarkan permohonan plaintif dengan kos:

(1) Dengan ketiadaan kontrak bertulis sepertimana dalam kes ini, isu sama ada wujud kontrak yang mengikat pada dasarnya adalah persoalan C fakta. Bagi tujuan sifat pemabuk itu tidak mengesahkan atau menyangkal persetujuan mana-mana pihak kepada perjanjian perlu wujud bukti kukuh daripada saksi-saksi atau keterangan perubatan bagi membuktikan bahawa pihak yang menegaskan fakta tersebut sebenarnya telah minum terlalu banyak sehingga dia mungkin tidak D boleh memahami terma-terma perjanjian untuk memberikan persetujuannya padanya. Dalam kes ini tidak ada bukti sedemikian. Bahkan, bukti menunjukkan bahawa meskipun defendan telah menimbulkan isu sifat pemabuk dalam plidingnya dan keterangan pada mulanya, dia telah menegaskan dalam pemeriksaan balas bahawa tiada E siapa yang mabuk. Dengan pengakuan sedemikian, sifat pemabuk bukan pembelaan defendan untuk tidak mengesahkan atau menyangkal persetujuannya terhadap mana-mana perjanjian pada 14 September 2005 (lihat perenggan 14–15).

F (2) Atas imbangan kebarangkalian ia telah didapati bahawa keterangan langsung saksi-saksi plaintif yang plaintif hadir dan bersetuju kepada belian hartanah tersebut menyokong keterangan suami plaintif dan plaintif dan oleh itu lebih berkemungkinan jika dibandingkan dengan keterangan defendan dan saksinya. Berdasarkan keterangan sedemikian adalah dibuktikan bahawa plaintif hadir pada masa perbincangan jual G beli itu setelah dia bersetuju dengan cadangan suaminya untuk membeli hartanah tersebut daripada defendan (lihat perenggan 17).

(3) Berdasarkan keterangan defendan semasa pemeriksaan balas, adalah jelas bahawa pada 14 September terdapat perbincangan untuk jualan H hartanah tersebut pada harga RM300,000 dan ia berkemungkinan bahawa salah satu daripada terma yang telah dipersetujui oleh pihak-pihak adalah bahawa plaintif akan membayar dan menebus hartanah tersebut dari BCB dan membayar baki harga belian kepada defendan. Jika maklumat tentang jumlah pinjaman yang masih belum I dijelaskan dengan bank itu tidak dibincangkan maka plaintif dan saksi-saksinya tidak akan mengetahui bahawa defendan masih berhutang dengan BCB (lihat perenggan 24).

(4) Jika tidak ada perjanjian antara plaintif dan defendan, defendan tidak boleh dipujuk atau dipaksa untuk menerima RM30,000, iaitu 10% daripada harga belian hartanah itu. Adalah munasabah untuk membuat inferens bahawa defendan berasa tersekat oleh perjanjiannya pada 14 September 2005 yang tidak dapat dibatalkan olehnya pada 15 September 2005 dan oleh itu berasa terpaksa untuk menerima RM30,000 itu. Berdasarkan keterangan sedemikian, keterangan saksi-saksi defendan tentang tiadanya perundingan dan tiadanya perjanjian akan gagal atas imbangan kebarangkalian. Dalam apa-apa kes keterangan saksi-saksi defendan adalah tidak konsisten dan tidak boleh dipercayai. Berdasarkan keseluruhan keterangan dan atas imbangan kebarangkalian, plaintif telah membuktikan bahawa satu perjanjian lisan telah dimasuki antaranya dan defendan berkaitan jual beli hartanah tersebut pada harga RM300,000 dengan terma-terma lain yang mengikat sepertimana dinyatakan dalam keterangan oleh plaintif dan saksi-saksinya (lihat perenggan 26–27).

(5) Deklarasi defendan pada 15 September 2005 bahawa dia tidak menjual hartanah tersebut menunjukkan yang dia berniat untuk melakukan pelanggaran. Dengan fakta yang dia telah menerima RM30,000 itu yang merupakan 10% daripada harga belian RM300,000, defendan telah gagal mengemukakan semua dokumen-dokumen sepertimana yang telah dipersetujui olehnya untuk menyediakan perjanjian jual beli ditambah dengan niatnya untuk melanggar perjanjian lisan itu. Akhirnya pulangan deposit RM30,000 selanjutnya mengesahkan pelanggaran adalah di pihak defendan. Oleh demikian atas imbangan kebarangkalian defendan telah melakukan satu pelanggaran perjanjian lisan (lihat perenggan 29).

(6) Pelaksanaan spesifik adalah relief yang adil. Di bawah s 11(2) Akta Relief Spesifik 1950, kecuali dan sehingga yang bertentangan dibuktikan, mahkamah hendaklah menganggap bahawa pelanggaran kontrak untuk memindah hartanah tak alih tidak boleh diberikan pampasan secukupnya dalam bentuk wang. Dalam kes ini tidak ada keterangan yang bertentangan (lihat perenggan 30).]

Notes

For cases on formation of contract in general, see 3(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 3712–3849.

Cases referred to

Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal [1995] 2 MLJ 770, CA (refd)

Browne v Dunn [1893] 6 R 67, HL (refd)

Diamond Peak Sdn Bhd & Anor v Dr Tweedie [1982] 1 MLJ 97, HC (refd)

Lau Sieng Nguong v Hap Shing Co Ltd [1969] 1 MLJ 190, FC (refd)

R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145; [1997] 1 AMR 433, FC (refd)
Rasiah Munusamy v Lim Tan & Sons Sdn Bhd [1985] 2 MLJ 291; [1985] CLJ (Rep) 266, SC (refd)
Sivalingam Periasamy v Periasamy & Anor [1995] 3 MLJ 395; [1996] 4 CLJ 545, CA (refd)
Sivapragasam Nagamany v Amaravathy v Nadeson & Anor [2001] 8 CLJ 706, HC (refd)
Yong Kon Fatt & Anor v Hock Seng Construction Sdn Bhd & Anor [2000] 5 MLJ 551; [2000] 8 CLJ 686, HC (refd)

Legislation referred to

National Land Code 1965 Form 14A
Specific Relief Act 1950 s 11(1)(c), (2)

Mohamed Reza Abdul Rahim (MS Rajendran with him) (Rajen & Lim) for the plaintiff.
Kanesh Sundrum (Kanesh Sundrum) for the defendant.

Chew Soo So JC:

FACTS OF THE CASE

[1] The plaintiff's claim against the defendant is, inter alia, for specific performance of an oral agreement/contract entered into by both of them on 14 September 2005 at about 8.30pm at house No 82, Taman Baru, Seberang Jaya, Penang where the defendant agreed to sell and the plaintiff agreed to buy a semi-detached house belonging to the defendant at No 2051, Supreme Garden, 13700 Perai, Penang ('the said property') at the price of RM300,000.

[2] On 14 September 2005, an annual prayer ceremony was held at the house of the plaintiff's mother-in-law at the aforesaid address from 7pm–9.30pm. About 30 people comprising of family members and friends of the plaintiff's husband, M Sugumaran a/l R Muniandy (PW5) attended. The defendant who was PW5's friend was invited and attended that night.

[3] The plaintiff's case is that at about 8.30pm while her husband, PW5 was in his mother's house at the aforesaid address with the defendant and two other friends namely, Vijayandran a/l Veloo (PW3) and Parameswaran a/l Ramasamy (PW4), the defendant had offered to sell to PW5 the said property. PW5 expressed his interest but as he might have problem in obtaining a loan from the bank, he then discussed the matter with his wife, the plaintiff who agreed to purchase the said property. PW5 then discussed with the defendant who agreed to sell the said property at RM300,000 to the plaintiff. The defendant also told PW5 that he (the defendant) was still

paying installment for his loan from Bank Bumiputra Commerce (now CIMB Bank). PW5 then informed his brother M Govindarajoo a/l R Muniandy (PW1) who is a lawyer practicing in the legal firm known as M Govind & Co and who was also attending the prayer ceremony at the material time of the intended sale and purchase. PW1 then asked the defendant whether he wanted to sell the said property to the plaintiff and the defendant confirmed that he wanted to sell. PW1 wanted to know the term of the sale and purchase and it was disclosed to him that the defendant wanted to sell at a price of RM300,000 and the plaintiff had agreed to buy at that price. Both parties also agreed that the plaintiff was to pay the defendant RM30,000 in cash as requested for by the defendant on the following day ie 15 September 2005. The defendant also informed PW1 when asked by PW1 as to the mode of payment of the balance sum of RM270,000 that the plaintiff shall pay this balance sum within three months from the date of the agreement with one month extension. The defendant also agreed to deliver vacant possession and execute transfer of the said property upon full payment. PW1 also asked the defendant whether he had taken any loan from any bank when he bought the said property. The defendant replied that he was still paying installment for the loan from Bank Bumiputra Commerce. PW1 then explained to the plaintiff and her husband, PW5 that they had to settle the balance of the defendant's loan and redeem the said property from Bank Bumiputra Commerce.

[4] The defendant also agreed to this term. PW5 informed the defendant that the plaintiff also contemplated to take a loan from the bank to pay the balance of the purchase price. PW1 then informed the defendant that since PW1 would be acting for the plaintiff, the completion of the sale ie the payment of the balance of the purchase price shall be performed in his legal firm and the defendant agreed. PW1 also informed both the plaintiff and the defendant that all other terms and conditions of the agreement would be the normal ones that were contained in a sale and purchase agreement. This sale and purchase agreement was a mere formality to enable the plaintiff to obtain a loan from the bank. Thereafter, the defendant shook hands with PW5 indicating he was satisfied with the sale. The aforesaid discussion and agreement reached were witnessed by PW3 and PW4 who testified to the same.

[5] On 15 September 2005 at about 5pm, the defendant came to the house of PW5's mother and PW5 paid the defendant cash of RM30,000 for and on behalf of the plaintiff as part payment towards the purchase price of the said property as agreed. The defendant then promised to hand over the relevant documents of the said property to Messrs M Govind & Co to enable PW1 to prepare the sale and purchase agreement. However, except for having faxed

to PW1 the quit rent and assessment receipts of the said property, the defendant had failed to deliver the rest of the relevant documents as promised despite several requests.

[6] On 29 September 2005, PW5 and PW4 went to the defendant's shop by the name Meenachi Textiles in Prai to obtain the relevant documents but the defendant informed PW5 that he (defendant) would only agreed to give the documents if the plaintiff agreed to increase the purchase price to RM400,000 which PW5 obviously did not agree relying on the initial agreement reached on 14 September 2005. PW5 told the defendant to deliver the documents to PW1 as soon as possible.

[7] On 30 September 2009 at about 12.30pm, the defendant came to the plaintiff's house at No 99 Taman Baru, Seberang Jaya, 13700 Prai, Penang and returned the RM30,000 to PW5 saying that the defendant would not want to abide by the oral agreement if the plaintiff did not wish to increase the purchase price to RM400,000. PW5 reiterated the oral contract and told the defendant that the defendant had to abide by it. However, the defendant left the cash behind and went off.

[8] The defendant's version is that on 14 September 2005, after the prayer ceremony, food and alcohol were served. The defendant, Sugumaran, PW5 and about ten other friends including PW1 and one Rajaveloo a/l Murugiah (DW2) were there. Under the influence of drinks at that time, the defendant had discussed the said property with Parameswaran a/l Ramasamy (PW4) who was the immediate neighbour of the defendant's said property. At that time, PW5 asked the defendant to sell the said property to the former but the defendant replied that he would discuss with his wife and family and if they agreed to sell, the defendant would probably sell the said property for RM300,000 to PW5. The defendant denied that there was an oral agreement concluded on 14 September 2005.

[9] On 15 September 2005 at about 8.30am, the defendant telephoned to inform PW5 that his wife and family did not agree to sell the said property and he rejected PW5's offer to buy the said property which PW5 accepted. At that conversation, the defendant was invited by PW5 to go to the house of PW5's mother that day at 12.30pm for the completion of the prayer ceremony. The defendant was able to make it to the house of PW5's mother at 4pm. A group of friends including DW2 and DW3, was in PW5's house drinking. PW5's house was just two doors away from his mother's house. The defendant being invited by PW5 went with PW5 to pray in the small temple by the side of the house of PW5's mother. After the prayer, PW5 handed a big envelope containing cash to the defendant as the 10% deposit for the said property. The defendant tried to return the money saying he was not selling

the said property but PW5 declined to accept back. Both of them then went back to PW5's house where PW5 declared to all friends including his brother, PW1 who were present that he had just paid the defendant RM30,000 as deposit for the said property. The defendant, nevertheless, placed the envelope of cash on the table and informed all those present that he did not agree to sell the house and did not wish to accept the money. However, on being forced by PW5 and a few other friends, the defendant unwillingly uttered that he was willing to sell the said property if PW5 would come up with the balance of RM270,000 and pay him on the next day. PW5 agreed initially but PW1 advised PW5 not to be hasty but to request for two weeks for the payment and the defendant accepted to defer for two weeks. Thereafter, the defendant informed PW5 and PW1 that the said property was charged to Bank Bumiputra Commerce and he was still owing the bank of about RM100,000. He requested them to confirm with the bank as to his outstanding debt and subsequently to prepare two bank drafts ie one for the bank for his outstanding loan and the other for his balance. The defendant said he was well aware that PW5 would not be able to come up with the balance purchase of RM270,000 but he was not prepared to forfeit the RM30,000 as PW5 was a poor man. Consequently, the defendant imposed a condition that if he was asked to sign an S & P agreement immediately and if PW5 was unable to pay the balance of the purchase price within the two weeks, the RM30,000 would be forfeited but if no S & P agreement was signed within the two weeks and PW5 was unable to pay the balance within the two weeks, the defendant would return the RM30,000.

[10] On 29 September 2005 at about 7.30pm, PW5 telephoned the defendant requesting the defendant to be in PW5's house at 12.30pm on 30 September 2005 to resolve matters relating to the said property.

[11] On 30 September 2005 the defendant went to the house of PW5's mother with Rajaveloo (DW2) and the defendant brought along with him RM30,000 cash. PW5 came to his mother's house with DW3. The defendant was informed by PW5 that he would pay RM70,000 and the balance would be paid by the end of the month. The defendant disagreed and forthwith returned the RM30,000 to PW5 who refused to accept it. The defendant, however, left the money on a table and informed PW5 that the agreement had ended. The defendant denied that he had ever increased the purchase from RM300,000 to RM400,000.

THE ISSUES

[12] From the above facts adduced by both parties, the agreed prime issue before this court is whether a binding oral agreement had been entered into on 14 September 2005 at about 8.30pm between the plaintiff and the

defendant for the purchase of the said property known as No 2051, Supreme Garden, 13700 Perai, Pulau Pinang erected on land Lot No 2852, Mukim 1, Daerah Seberang Perai Tengah, Pulau Pinang held under title HSD No 41016 with vacant possession at a purchase price of RM300,000. If there was, the ensuing issue is whether the defendant had breached such agreement.

EVALUATION AND FINDINGS

[13] It is trite that an oral valid agreement is enforceable in law; see *Rasiah Munusamy v Lim Tan & Sons Sdn Bhd* [1985] 2 MLJ 291; [1985] CLJ (Rep) 266 (SC); *Diamond Peak Sdn Bhd & Anor v Dr Tweedie* [1982] 1 MLJ 97; *Sivapragasam Nagamany v Amaravathy v Nadeson & Anor* [2001] 8 CLJ 706, inter alia.

[14] In the absence of a written contract as in this case, the role of this court is fundamentally to determine whether the evidence adduced is sufficient to establish the existence of a binding agreement between both parties in that the parties are no longer in the negotiation stage but have in fact concluded a binding agreement. Whether a binding contract exists is essentially a question of facts; see *Lau Sieng Nguong v Hap Shing Co Ltd* [1969] 1 MLJ 190 (FC).

[15] The dispute of this case emanates from the gathering of the plaintiff, her husband, PW5, PW5's family members and friends in the house of PW5's mother for an annual prayer ceremony at house No 82, Taman Baru, Seberang Jaya, Penang on the 14 September 2005 from 7pm–9.30pm. The defendant was one of PW5's invited friends who attended the ceremony that night. After the prayer, according to the defendant, food and alcoholic drinks were served. PW5 denied serving alcoholic drinks but explained that some of the attendees in the ceremony brought the alcoholic drinks themselves. PW5 said he did not take the alcoholic drinks because he was the organiser of the prayer ceremony. Whatever it may be, even if the parties were indeed having alcoholic drinks that night, to constitute drunkenness as a defence to vitiate or negate the consent of any party to an agreement, there must be strong evidence from witnesses or medical evidence to prove that the party who asserted that fact was in fact drunk so much so that he would probably not be able to comprehend the terms of the agreement to give his consent thereto. In this case, there is no such evidence. In fact, evidence shows otherwise as candidly admitted by the defendant himself. The defendant raised such issue in his pleadings and evidence initially as shown in his witness statement, exh D1 Q & A 3 that he was 'agak mabuk' which appears to suggest drunkenness as his defence but he affirmed in cross-examination that no one

was drunk. By such admission, drunkenness is thus not the defendant's defence to vitiate or negate his consent to any agreement on 14 September 2005.

[16] The next issue contended by the defendant was that the plaintiff was not at the place where the defendant, PW5 and others were having discussion in the house of PW5's mother. From all those who had attended that night, it is not disputed in evidence that Govindarajoo (PW1) who is a lawyer, Parameswaran (PW4), Sugumaran (PW5), the defendant and Rajaveloo (DW2) were there. The plaintiff, PW5, PW1 and PW4 said that Vijayandran (PW3) was also present with them and the defendant but refuted that DW2 was seated at the same table with them. DW2 was seated at the next table. I find that PW1, PW3, PW4, PW5, the defendant and DW2 were present at the said house at the material time. The defendant stated that the plaintiff was never among them in the group when the sale of the said property was discussed. The defendant did not know the plaintiff though she is the wife of PW5 whom he had known for several years. The defendant contended that he had not entered into any contract with the plaintiff. The plaintiff acknowledged that she was not with the group during the initial discussion between PW5 and the defendant over the sale and purchase of the said property as she was busy at the kitchen but when PW5 informed her of the sale of the said property, she then joined them and was present during the subsequent discussion for the sale and purchase. PW5 confirmed that after the defendant had offered to sell him the said property, he expressed that he might have problem to obtain a loan from the bank but that his wife, the plaintiff could buy the said property. PW5 then discussed with the plaintiff who agreed to buy the said property. PW3 confirmed that the plaintiff came out and joined them after PW5 had gone to discuss with her in the kitchen while PW4 confirmed that the plaintiff was present with them at the subsequent discussion of the sale and purchase of the said property. Evidence of PW1 also indicates that the plaintiff was present though most of the talking was done by her husband, PW5. PW4 in cross-examination was emphatic about the presence of the plaintiff when he confidently answered the questions put as follows:

S: Adakah Plaintiff bersama-sama anda semasa perbincangan diadakan?

J: Ya, ada bersama kami.

S: Apakah yang dikatakan oleh Plaintif semasa Defendan menawar menjualkan rumahnya kepada Plaintif?

J: Plaintif mengatakan bahawa beliau hendak membeli rumah tersebut.

Cadangan: Apa yang dikatakan oleh anda itu tidak benar kerana Plaintif tidak ada bersama anda semasa itu.

A J: Saya tidak setuju

Plaintif ada bersama kami.

Cadangan: Defendan dikatakan membuat tawaran, Plaintif berada di dapur.

B J: Pada permulaan perbincangan, Plaintif berada di dapur

Selepas suami Plaintif pergi ke dapur dan berbincang dengan Plaintif, kemudian mereka keluar ke tempat perbincangan.

C **[17]** The defence submitted that PW4 had ill feeling with the defendant by PW4's refusal to give his required approval to enable the defendant to convert the said property to commercial for the purpose of opening a jewellery and textile business in the said property. This of course did not happen in September 2005. This court finds no basis in this argument as there is no D evidence to substantiate the defendant's contention. There is no evidence when that allegation occurred. I find PW4's evidence above to be credible and convincing. Apart from the defendant alleging that plaintiff was not present, the defendant's witness, DW2 did not testify specifically that the plaintiff was not present during the subsequent discussion. What he said during E cross-examination was that PW5 never entered the house after the discussion but was seated in front of him implying that PW5 had not left to discuss with the plaintiff. If the defendant wanted DW2 to corroborate his evidence that the plaintiff was not present at all, it is only conceivable that direct question should be asked of DW2 to obtain a clear answer bearing in mind that there F were two stages of the discussion of the sale and purchase of the said property. In addition, various inconsistencies in DW'2 evidence gives rise to a doubt as to his credibility and his presence at the same table with the group of them. On a balance of probabilities, this court finds the direct evidence of PW3 and PW4 who were with PW5 and the defendant as well as the evidence of PW1 G that the plaintiff was present and agreed to the purchase of the said property to have corroborated the evidence of PW5 and the plaintiff and thus more probable as compared to the evidence of the defendant and DW2. On this point, this court accepts as a fact that the plaintiff was present at the discussion of the sale and purchase after she had been informed by her H husband and after she had agreed with her husband to buy the said property from the defendant.

[18] There is no dispute by both parties over the said property which is the subject matter of dispute. There is also no dispute that on 14 September I 2005, the selling price of the said property was mentioned to be RM300,000. According to the defendant, PW5 heard the defendant's discussion with Parameswaran (PW4) of the sale of the said property over the table and PW5 offered to buy from the defendant at RM300,000 but the defendant replied that he would discuss with his wife and family before reverting to PW5. That

appears to be all that was said by the defendant on the night of 14 September 2005. In other word, the defendant contended that there was not only no agreement but also no negotiation; it was merely an offer by PW5 which he was yet to decide on acceptance. However, why was all evidence from all witnesses of the plaintiff as well as the defendant said that there were 'perbincangan' (discussion) when according to the defendant, there was none? The plaintiff and PW5 as well as their witnesses PW3 and PW4 and in particular PW1 who would be the lawyer acting for both parties to complete the sale and purchase, said that the defendant had offered to sell the said property at RM300,000 and the plaintiff agreed to buy at that price. The plaintiff also agreed to pay the defendant RM30,000 in cash as requested by the defendant on the following day, 15 September 2005. The further terms agreed by both parties were that the balance sum of RM270,000 was to be paid within three months from the date of the agreement with the extension of one month and that the defendant was to deliver vacant possession upon the date of completion or the extended date of completion and to execute the transfer in favour of the plaintiff. The plaintiff also agreed to pay the redemption money to redeem the said property from Bank Bumiputra Commerce Bhd before the completion date or the extended completion date as the defendant was still owing the said bank when he purchased the said property. Both the plaintiff and the defendant also agreed that the completion of the sale and purchase as well as the payment of the balance purchase price after redemption of the said property from Bank Bumiputra Commerce Bhd shall be carried out at the legal firm of PW1 at Messrs M Govind & Co. PW1 confirmed all the above terms to have been agreed upon by both the plaintiff and the defendant and stated that the rest of the terms and conditions were as in a normal sale and purchase agreement. PW1 added that the preparation of the said sale and purchase agreement was a formality and it was to facilitate the plaintiff to apply for loan from a bank. Evidence of all the plaintiff's witnesses is consistent with a discussion of sale and purchase being held.

[19] The defendant denied having discussed with PW1 and PW5 any terms for the sale and purchase of the said property on 14 September 2005. He explained that the topic of the sale was started off by PW4 who was occupying the house adjoining the said property. PW4 asked the defendant to sell the said property to him as PW4 was given a notice by the temple to remove his coffee shop situated in the temple compound next to the house of PW5's mother with some compensation. PW4 offered to buy from the defendant at RM300,000 but the defendant declined. According to the defendant, when he had declined PW4's offer, PW5, the plaintiff's husband then insisted that the defendant should sell the said property to him. To please PW5, the defendant said that he would sell it to PW5 if his family agreed as their money was in the said property. He denied he was the one who offered to sell the said property to PW5 or the plaintiff. That was about all that the defendant had apparently discussed with the parties. DW2

confirmed as to the defendant's reply to PW5's alleged offer. From what had been testified by the defendant, it would appear that in actual fact, the whole episode sparked off from PW4 who wanted the defendant to sell the said property to him and that it was PW4 who offered to buy at RM300,000 from the defendant for which the defendant declined. This is a crucial part of the defence to indicate the defendant had never raised the issue of sale and had never had the intention to sell the said property. Regrettably, this very vital defence was neither pleaded nor expressed in the defendant's witness statement, D1 and it was also not put to PW4 in cross-examination; it was only disclosed for the first time during supplementary questions in the defendant's examination-in-chief. It is trite that parties are bound by their own pleadings; see *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145; [1997] 1 AMR 433 (FC) at p 457. In *Sivalingam Periasamy v Periasamy & Anor* [1995] 3 MLJ 395; [1996] 4 CLJ 545, the Court of Appeal adopted the rule of procedure propounded in *Browne v Dunn* [1893] 6 R 67 as follows:

> It is essential that a party's case be expressly put to his opponent's material witnesses when they are under cross-examination. A failure in this respect may be treated as an abandonment of the pleaded case and if a party, in the absence of valid reasons, refrains from doing so, then he may be barred from raising it in argument. It is quite wrong to think that this rule is confined to the trial of criminal causes. It applies with equal force in the trial of civil causes as well.

[20] See also *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770 at p 774 (CA). For the defendant to adduce such a fact only at the eleventh hour in his oral evidence in court when he had all the opportunity to put forward such fact in his pleadings, in cross-examining PW4 and in his own witness statement but failed to avail himself, is a clear manifestation of an afterthought or a recent invention in the absence of any valid reason. DW2 whom the defendant affirmed to be seated with him at the material time did not adduce such pertinent fact in his witness statement, D2 nor in any part of his evidence. DW2 could not have missed this alleged vital aspect of the defence if that is the truth or if he was truly seated with the defendant then. The only reasonable inference to be drawn is that such fact might not have occurred. For these reasons, I reject this fact which is not pleaded and not put to PW4 as required by law but advanced only at the eleventh hour during trial.

[21] The defendant in cross-examination said of the following:

Q: On 14.9.2005 at about 8.30 pm, you had a discussion with PW1, PW5 and the Plaintiff in the presence of PW3 and PW4 wherein you had agreed to sell the said house at a price of RM300,000.00 to the Plaintiff?

A: Plaintiff was not there at any time. I did not know whether PW3 was present but PW1, PW4 and PW5 were there.

[22] When the defendant answered the question, this court wondered whether he understood the question and its implication when he gave that answer; the defendant nevertheless said, 'Yes, I understand the question'.

[23] His further evidence expressed:

> I agree that the house in dispute was charged to the bank on 14.9.2005 ie Bumiputra Commerce Bank formerly and now CIMB Bank. At the time of discussion on 14.9.2005, the amount outstanding in BCB was around RM100,000.00.
>
> Q: Did you mention this to Sugumaran or Govindarajoo?
>
> A: (Witness paused) I think so.

[24] From the above evidence of the defendant, it is consistent that on 14 September 2005 at about 8.30pm, there was discussion of the sale of the property at the price of RM300,000 and that it is probable that one of the terms that the plaintiff and the defendant had agreed was to pay redemption sum to redeem the said property from Bumiputra Commerce Bank ('BCB') and pay the defendant the balance of the purchase price. This court does not agree with the argument of learned counsel for the defendant that the above did not refer to the incident on 14 September 2005. The questions and answers above were categorically in relation to what transpired on 14 September 2005 at the relevant time; the date 14 September 2005 was expressed. The defendant said he had informed PW1, Govindarajoo and PW1 had so testified that there was such an agreed term on 14 September 2005 in relation to redemption from BCB. The defence's argument is that there was a conditional agreement on 15 September 2005 and the defendant said that such information was disclosed on 15 September 2005 but DW2 said nothing was said to that effect. This contradiction gives rise to a doubt whether the defendant had said as he claimed. If the defendant did not disclose and agree on this term on 14 September 2005, how would the plaintiff and her witnesses know that the defendant was still owing to BCB, in particular, and not just any other bank? This court is satisfied from the evidence that the defendant must have stated this fact of his loan with BCB on 14 September 2005 and agreed on the redemption with the plaintiff. Apart from this, the defendant also admitted that he agreed to give vacant possession of the house after completion of the sale and added that 'that's nature'. This is another one of the other agreed terms on 14 September 2005.

[25] One salient fact in this case is that the defendant had also admitted though he said 'forcefully' that he had received the RM30,000 cash being 10% deposit and advance payment towards the purchase price of RM300,000 on 15 September 2005 which according to the plaintiff and her witnesses was agreed upon on 14 September 2005. In the first place, if the defendant had never intended to sell the said property, to this court, the simple thing for him to do is simply to reject the payment and leave. He said that he was forced to receive the said RM30,000 in cash because PW5, PW4 and other friends forced him to do so. In what way was he forced? He did not elaborate but DW3, when being re-examined as to how the defendant was forced, said the following:

Sugumaran turut memaksa Defendan pada 15.9.2005

S: Apa yang dibuat oleh Sugumaran?

J: Melalui percakapan iaitu seperti dalam perjanjian, apabila wang deposit dibayar kepada Defendan, ia bermaksud rumah itu dijual kepadanya. Parameswaran juga memaksa Defendan.

S: Apakah yang dibuat oleh beliau?

J: Melalui pujukan supaya menerima wang tersebut.

D3 S & J 3 di perenggan 3.5 ayat terakhir dirujuk.

S: Kamu kata di sini Govindarajoo menasihati Sugumaran supaya jangan memaksa Defendan tetapi dalam keterangan tadi, kamu kata Govindarajoo turut memaksa Defendan. Sila jelaskan.

J: Govindarajoo turut memaksa Defendan supaya menuruti perjanjian yang dibuat pada hari pertama.

[26] From the evidence of DW3 above, I do not find any force being used but it was more of a persuasion rather than force that the defendant should abide by his agreement earlier. This is clearly depicted in the words of DW3 that what PW5 Sugumaran said was 'seperti dalam perjanjian' and what PW1 Govindarajoo emphasised to the defendant was 'supaya menuruti perjanjian yang dibuat pada hari pertama' which referred to none other than the agreement on 14 September 2005. This evidence comes from the defence's re-examination of DW3. The defence by accepting this evidence given by DW3 had in effect admitted that the defendant accepted the RM30,000 because he felt compelled to abide by an agreement on 14 September 2005. The acceptance of the existence of an agreement on 14 September 2005 topples the whole of the defendant's and DW2's evidence that there was no agreement entered into on 14 September 2005. On this fact, the defendant's submission that the version of PW3 that the discussion was in the hall of the

house of PW5's mother while the other witnesses said that it was held outside the house in the compound, though a contradiction, does not erode the fact that there was an agreement on 14 September 2005 entered into between the parties herein. To reiterate, if there was no agreement between the defendant and the plaintiff though her husband PW5 played a major role in the discussion, this court is of the view that no one could persuade or force the defendant to accept the RM30,000 as deposit and advance payment towards the purchase price of the said property. In the absence of an earlier agreement, the defendant could not be compelled to accept the money being 10% of the purchase price. It is only reasonable to infer and indeed probable that the defendant felt constrained of his agreement on 14 September 2005 which he could not revoke on the 15 September 2005 that he felt compelled to receive the RM30,000. On this acceptance of DW3's evidence, the defence of no negotiation and no agreement between the plaintiff and the defendant on 14 September 2005 at about 8.30pm should fail on a balance of probabilities. Again, evidence of DW2 was inconsistent with that of the defendant and is unreliable as matters admitted to have been said by the defendant but DW2 alleged they were not mentioned at all or that he could have missed. This could probably be so if he was perhaps seated at the next table as said by PW4 and not besides the defendant.

[27] Having considered the evidence of both parties herein, this court accepts the plaintiff's version of the event on 14 September 2005 to be consistent and cogent. From the totality of evidence and on a balance of probabilities, this court finds that the plaintiff had proved that an oral agreement had been entered into between herself and the defendant in respect of the sale and purchase of the said property at RM300,000 with the other concluded terms as stated in evidence by the plaintiff and her witnesses. This court further finds that both the parties had intended the agreement to be legally binding as they got the lawyer, PW1 to complete the sale and purchase agreement in writing though a formality and to attend to legal matters leading to final payment and execution of transfer of the said property in favour of the plaintiff. There is therefore a binding oral agreement entered into on 14 September 2005 at about 8.30pm between the plaintiff and the defendant for the sale and purchase of the said property on the agreed terms as evidenced by the plaintiff and her witnesses.

[28] Turning to the second issue of whether the defendant had breached the binding agreement of the 14 September 2005. Defence submitted that there was a conditional contract on 15 September 2005 when the defendant accepted the RM30,000 deposit and advance payment but with a condition that he would sell the said property to PW5 unless the balance sum of RM270,000 had to be paid on the following day which was subsequently extended to two weeks. The defendant alleged that PW5 had agreed to this

A term. The further term was that if the defendant was asked to sign the sale and purchase agreement immediately and if PW5 was unable to pay the balance purchase price within two weeks, the deposit would be forfeited but if he was not asked to sign the agreement immediately and if PW5 was unable to pay within two weeks, the defendant would return the RM30,000. B However, upon expiry of two weeks, PW5 was unable to pay the RM270,000 and on 30 September 2005, the defendant returned the RM30,000 and terminated the conditional agreement. PW5 said in evidence that on 15 September 2005, the defendant came to his (PW5's) mother's house at about 5pm. The plaintiff then asked PW5 to pay the cash of RM30,000 to the C defendant. PW5 accordingly paid the defendant who accepted it agreeing that he would hand in the relevant documents of the said property to Messrs Govind & Co to enable PW1 to prepare the sale and purchase agreement. On 29 September 2005, PW5 went with PW4 to the defendant's textiles shop to ask for the other relevant documents and the defendant said he would sell if D the price was increased to RM400,000 which PW5 did not agree and insisted on the price as per the agreement on 14 September 2005. For this reason the defendant returned the money on 30 September 2005. In cross-examination, PW5 agreed that he handed the cash to the defendant outside the temple next to his mother's house. He further agreed that after he and the defendant E returned to his mother's house and seated with the group of friends, PW5 had declared to his friends that he had just paid the RM30,000 to the defendant. PW5 disagreed that the defendant placed the cash on the table and refused to accept it but when being forced to by PW5 and friends present there, the defendant accepted the cash on condition that the payment of the balance F sum of RM270,000 had to be on the following day. PW5 disagreed that on being advised by PW1, PW5 then asked for two weeks to pay the balance sum. PW5 said that PW1 was not present at that material time. On 16 September 2005, the undisputed fact is that the defendant had faxed the quit rent and assessment receipt of the said property to PW1 of Messrs Govind & G Co but not the loan agreement and other relevant agreements. According to PW1 in cross-examination, when he arrived, he was shown the cash and the envelope that PW5 had paid to the defendant. He agreed that the defendant then in the house of PW5 told all those present that he did not agree to sell the house. He further agreed that a few friends had forced the defendant to H accept the RM30,000 and sell the said property and the defendant then agreed to sell on the condition that PW5 would pay the whole balance sum by 16 September 2005. PW1 could not remember whether he had advised PW5 to ask for two weeks as he was not involved in the discussion and added that if he was no mistaken, the defendant had given PW5 two weeks to settle I the balance of the purchase price. PW1 said he was informed on 15 September 2005 that the defendant did not want to sell the said property to the plaintiff although the plaintiff had paid RM30,000 deposit to the defendant. On 15 September 2005, PW1 stated that there was an argument between both parties over this matter. On what transpired on 15 September

2005, DW2 and DW3 gave evidence vide their respective witness statements in line with the evidence in the witness statement of the defendant as recapitulated above that the defendant refused to accept the RM30,000 as he refused to sell the said property but when forced by Sugumaran's friends, the defendant accepted the money on condition that Sugumaran paid the balance on the following day which Sugumaran agreed but on the advice of PW1 to Sugumaran to ask for two weeks, the defendant agreed for the two weeks. DW3 also said that there was an argument at that time. All parties confirmed that the plaintiff was not present on 15 September 2005 when that discussion or argument took place.

[29] The whole of the the defendant's contention on what had transpired on 15 September 2005 was that there was or probably a conditional contract between the defendant and PW5 which had nothing to do with the incident on 14 September 2005 as all along the defendant had never agreed to any term nor the term of payment of 10% by cash payable on 15 September 2005 according to the evidence of the plaintiff's case. In other words, it is a separate contract or agreement altogether since the defence had never contended that the alleged agreement on 15 September 2005 or the terms thereof were addendum to the existing contract entered on the 14 September 2009 or a variation of it. The defence denied in total the existence of an oral contract on 14 September 2005. That being the pleaded case of the defendant, whatever alleged agreement on the 15 September 2005 between the defendant and PW5 and not with the plaintiff would have no bearing to the oral agreement on 14 September 2005 and cannot be construed as a new term to negate or vary the oral agreement on 14 September 2005 as the defendant is bound by his pleadings. It would be against the defendant's pleaded case if this court were to construe the incident on 15 September 2005 as an additional term or varied term to the oral agreement on 14 September 2005 which the defendant had never agreed to its existence nor the conduct of PW5 who allegedly agreed to pay the balance sum of RM270,000 within two weeks but failed to do so. The alleged agreed term by PW5 would be relevant to be considered in the oral agreement on 14 September 2005 if the defendant conceded that there was such an agreement. However, that was not the defendant's case. The payment of the RM30,000 by PW5 to the defendant on 15 September 2005 was for and on behalf of the plaintiff in compliance with the agreement on 14 September 2005. The question of whether the defendant accepted or rejected the RM30,000 does not affect the existence of the said agreement on 14 September 2005. The acceptance was a compliance with the said agreement and the refusal of it signifies a breach thereof. The payment of the said RM30,000 showed that the plaintiff had performed her obligation under the said oral agreement on 14 September 2005. By acceptance of the deposit and advance payment, the defendant had virtually affirmed the said oral agreement. The declaration of the defendant on 15 September 2005 that he was not selling the said property showed that

A he had intended the breach. Having accepted the RM30,000, the defendant failed to submit all relevant documents as agreed by him, apart from the quit rent and assessment receipts, to PW1 to prepare the sale and purchase agreement to facilitate the plaintiff to obtain a bank loan to finance the payment of the redemption outstanding loan of the defendant from BCB
B with the balance to be paid to the defendant, added to his intention to breach the said oral agreement. The ultimate return of the RM30,000 deposit and advance payment as the agreed payment of 10% towards the purchase price of RM300,000 further affirmed the breach on the part of the defendant. On a balance of probabilities, this court finds that the defendant had committed
C a breach of the said oral agreement.

CONCLUSION

D **[30]** In conclusion, this court finds that the plaintiff had proved her case against the defendant on a balance of probabilities. The plaintiff prayed for, inter alia, specific performance of the oral agreement entered between the parties herein on 14 September 2005. Specific performance is an equitable relief given by the court to enforce against the defendant the duty of doing what he agreed by contract: *Sivapragasam Nagamany v Amaravathy v Nadeson*
E *& Anor*; s 11(1)(c) of the Specific Relief Act 1950. In *Yong Kon Fatt & Anor v Hock Seng Construction Sdn Bhd & Anor* [2000] 5 MLJ 551; [2000] 8 CLJ 686, His Lordship Clement Skinner JC (as he then was) held, inter alia, that under s 11(2) of the Specific Relief Act 1950, unless and until the contrary is proved, the court shall presume that breach of a contract to transfer
F immovable property cannot be adequately relieved by compensation in money. In the instant case, there is no evidence to the contrary.

[31] For reasons deliberated above, judgment is entered for the plaintiff with the orders as follows:

G

(a) defendan melaksanakan secara spesifik perjanjian lisan yang dibuat pada 14 September 2005 dan menandatangani satu perjanjian jual-beli antara plaintif dan defendan yang merangkumi terma-terma lisan tersebut;

H

(b) defendan melaksanakan dan menandatangani Borang 14A, Kanun Tanah Negara 1965 bagi memindah milik hartanah No 2051, Supreme Garden, 13700 Perai, Pulau Pinang yang didirikan di atas Lot No 2852, Mukim 1, Daerah Seberang Perai Tengah, Pulau Pinang yang dipegang di bawah hakmilik HSD No 41016 (hartanah tersebut) kepada plaintif dan sekiranya defendan gagal dan/atau enggan berbuat demikian, Timbalan Pendaftar Mahkamah Tinggi Malaya diberi kuasa untuk melaksanakan dan menandatangani Borang 14A tersebut bagi pihak defendan;

I

(c) plaintif hendaklah diberi milikan kosong hartanah tersebut setelah Borang 14A Kanun Tanah Negara 1965 hartanah tersebut dilaksanakan oleh defendan atau Timbalan Mahkamah Tinggi Malaya;

(d) plaintif menggunakan harga belian di bawah perjanjian lisan yang dibuat pada 14 September 2005 untuk melepaskan dan membayar:

(i) keberhutangan defendan di bawah gadaian kepada BCB Bhd (iaitu pemegang gadaian); dan

(ii) liabiliti defendan bagi cukai pintu, cukai keuntungan harta tanah, fee dan duti setem untuk melepaskan gadaian tersebut.

(e) baki hasil jualan dibayar kepada defendan apabila Borang 14A Kanun Tanah Negara 1965 tersebut sudah didaftarkan;

(f) satu injunksi menghalang defendan dari menjual, pindahmilik, cagar, pajak, pajakan kecil atau apa-apa urusniaga kecuali untuk melaksanakan obligasi defendan di bawah perjanjian lisan tersebut dan/atau perjanjian jual beli antara plaintif dan defendan yang merangkumi terma-terma perjanjian lisan tersebut;

(g) satu perintah bahawa pihak-pihak tetapi tidak terhad kepada Pentadbir Tanah Daerah Seberang Perai Tengah, Pulau Pinang untuk mengambil segala tindakan yang perlu dan sewajarnya untuk memberi kesan kepada perintah-perintah yang diberikan oleh mahkamah ini; dan

(h) kos sebanyak RM15,000.

Plaintiff's application allowed with costs.

Reported by Kohila Nesan